



D. STAFFORD
& ASSOCIATES

Appellate Officer Class

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The Appellate Officer

- Title IX for Appellate Officers
 - Statute
 - Jurisdiction
 - Title IX Grievance Procedures
- Appeals
 - Appeal Basics
 - Making a Determination
 - Notification of Decision



TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION

To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

Attendees should report each absence using the online form provided (each class has its own unique form that is sent to all attendees via email prior to class). Attendees should complete the form twice for each absence: once to record their departure, and again to record their return. Attendees should complete the form immediately before leaving class and as soon as practicable upon their return. If an attendee signs out but does not sign back in, they will be marked absent for the remainder of the day.

The criteria for receiving a certificate is determined based on missed class time and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.

Some of our classes may qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate. For DSA & NACCOP, issuance of a Certificate of Completion is verification of attendance.



Adrienne Meador Murray, Executive Director, Equity Compliance and Civil Rights Services



Adrienne Meador Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.). In January 2014, Murray joined the National Association of Clergy Compliance Officers & Professionals (NACCOP) and serves as the Director of Training and Compliance Activities and D. Stafford & Associates (DSA) where she currently serves as Executive Director, Equity

Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012.

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



Catherine Cocks, M.A.
Director, Student Affairs, Behavioral Threat Assessment and
Independent Investigation Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment services. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.



NACCOP Title IX & Equity Alliance

The Alliance is a dedicated affinity group through which Title IX and Equity Professionals, and the practitioners who support and/or supervise them, can benefit from NACCOP's expertise in complying with the Clery Act, Title IX, and other civil rights laws that affect their work.

BENEFITS OF JOINING THE ALLIANCE

- **Access to NACCOP's annual 9 on IX webinar series at no additional cost (a \$710 value)**
 - These 60-minute succinct webinars will offer legal insight and practical guidance on Title IX topics from experts who have served or are currently serving as active practitioners on college and university campuses.
- **Alliance-Exclusive Professional Development Opportunities such as the Title IX & Equity Open House Discussion Series**
 - An Alliance-exclusive virtual open house will be held bi-monthly (every other month, 6 sessions annually) to engage with experts from NACCOP's partner organization, D. Stafford & Associates, as well as other invited guests, to discuss current trends and issues. Each open house will focus on a specific topic for discussion and participants will be encouraged to engage in the conversation.
- **Access to Alliance-Exclusive Whitepapers regarding Title VI, VII, and IX**
- **Connect and collaborate with other Title IX and Equity Professionals via an Alliance-restricted Listserv**
- **Discounted Professional Development Opportunities**
 - Coffee and Conversations webinar series and individual webinars focused on Title IX & Equity compliance issues
- **A 50% discount on the Title IX Notice Document Library developed by NACCOP's Partner Organization, D. Stafford & Associates (a \$335 value)**

Join the Alliance

Eligible individuals must have Institutional, Professional, or Committee Membership with NACCOP.

Cost: \$425 for 1 year subscription

(The first year of enrollment will be pro-rated to match the NACCOP membership expiration date.)

Request to Join: <https://naccop.memberclicks.net/join-the-alliance>

Questions? Contact us at info@naccop.org or 302-344-1068.

APPELLATE OFFICER TRAINING



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TITLE IX FOR APPELLATE OFFICERS



AGENDA

- Statute
- Jurisdiction
- Title IX Grievance Procedures

FEDERAL LAW



Statutes

20 U.S.C.D.
§1681-1688



Regulatory Guidance

34 C.F.R. § 106



Sub-Regulatory Guidance

DCLs
Preamble to Regs
Executive Orders
OCR Website



Case Law

Circuit courts
District courts

STATUTE



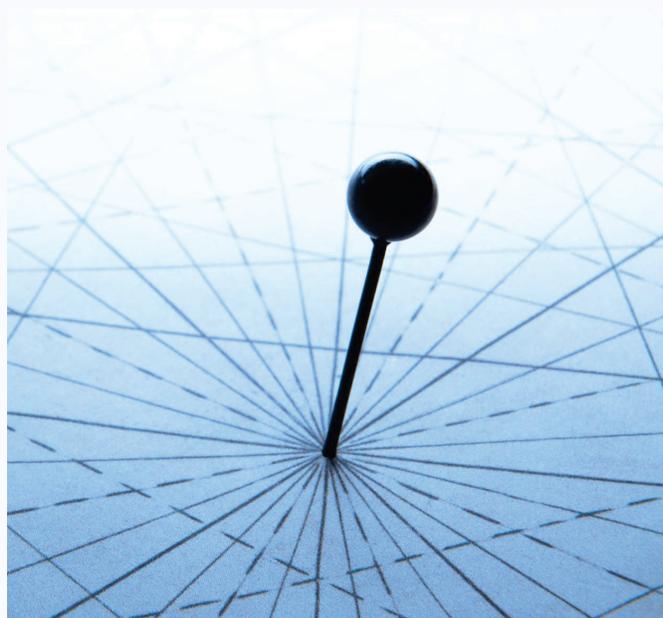
TITLE IX, EDUCATION AMENDMENTS OF 1972, 20 U.S.C. § 1681

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

§ 1681(c) - “EDUCATIONAL INSTITUTION”

Any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

JURISDICTION



JURISDICTION



Occurred in the context of educational program or activities



Occurred in the United States



Control over the Respondent

JURISDICTION OF PERSON



“At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity”



The institution must exercise control over the Respondent



All regulations apply to students and employees

TITLE IX GRIEVANCE PROCEDURES



GRIE

BEFORE WE BEGIN...

Sex Discrimination

§ 106.8(c)

- “grievance procedures that provide for the prompt and equitable resolution of student and employee complaints.”
- Any person may report sex discrimination to the Title IX Coordinator
- Must publish grievance procedures to address sex discrimination
- No requirement other than “prompt” and “equitable”

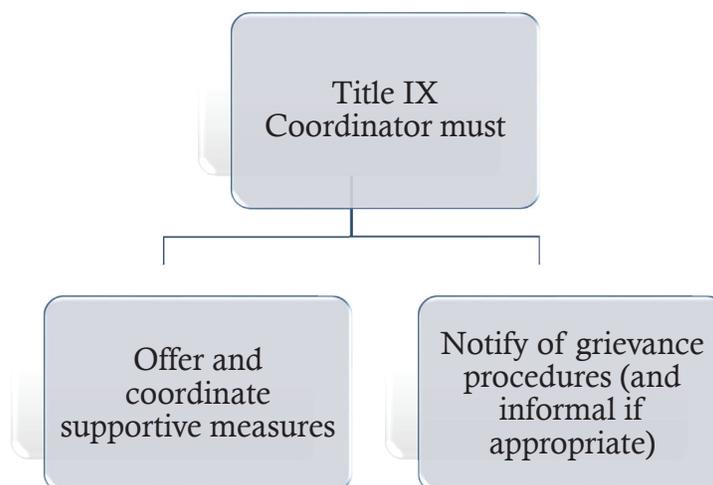
Sexual Harassment

§ 106.44 and § 106.45

Other Behaviors

Conduct codes

TITLE IX COORDINATOR OUTREACH DUTIES TO COMPLAINANT



FORMAL COMPLAINT

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.

DISMISSALS

- Must dismiss
 - The information in the complaint does not constitute sexual harassment
 - Not in the educational program or activity
 - Not in the United States
- May dismiss
 - Complainant withdraws complaint
 - Respondent is no longer enrolled
 - Prevented from gathering evidence

PEOPLE DEFINITIONS



§ 106.30(a) - DEFINITIONS

Complainant

- An individual who is alleged to be the victim of conduct that could constitute sexual harassment

Respondent

- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

TITLE IX PERSONNEL



DUTIES OF THE TITLE IX COORDINATOR

- § 106.8(a) Must be referred to as the “Title IX Coordinator”
- § 106.8(a) Coordinate efforts to comply
- § 106.44(a) Receive reports and promptly contact the complainant
- § 106.30 Sign formal complaints
- § 106.30 Responsible for coordinating the effective implementation of supportive measures

TITLE IX REGULATIONS TRAINING REQUIREMENTS



Definition



Scope of program or activity



Grievance process



Impartiality



Technology



Relevancy of questions and evidence

SEXUAL HARASSMENT DEFINITIONS



DEFINITION OF SEXUAL HARASSMENT UNDER TITLE IX

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- 1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;*
- 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;*
- 3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).*

QUID PRO QUO HARASSMENT



QUID PRO QUO HARASSMENT

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

QUID PRO QUO



Must be an employee (not volunteer, visitor, student)



“This for that” harassment



When favorable professional or educational treatment is conditioned on a sexual activity

HOSTILE ENVIRONMENT HARASSMENT

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HOSTILE ENVIRONMENT HARASSMENT

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

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HOSTILE ENVIRONMENT

Type, frequency, and duration of the conduct

Location of the conduct and the context

Parties' ages, roles, previous interactions, other factors

Degree to which the conduct affected access to the program or activity

Other sex-based harassment in the program or activity

SEXUAL ASSAULT



CLERY DEFINITIONS OF SEXUAL ASSAULT

- **Rape** - The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- **Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental incapacity.
- **Incest** - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** - Sexual intercourse with a person who is under the statutory age of consent.

34 CFR 668 Appendix A

DEFINITION OF CONSENT

The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.

STALKING



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STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) Fear for the person's safety or the safety of others; or
- (B) Suffer substantial emotional distress.

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STALKING



Course of conduct -
two or more act



Reasonable person
standard



Substantial emotional
distress

INTIMATE PARTNER VIOLENCE



DATING VIOLENCE

Violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (1) The length of the relationship;
- (2) The type of relationship; and
- (3) The frequency of interaction between the persons involved in the relationship.

DOMESTIC VIOLENCE

The term “domestic violence” includes felony or misdemeanor crimes of violence committed

- by a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

RETALIATION

Cannot intimidate, threaten, coerce, or discriminate others

MAY use the same grievance procedure

First Amendment considerations

SERVING IMPARTIALLY



CREDIBILITY OF THE PROCESS



CONFLICT OF INTEREST OR BIAS

Generally



Individually



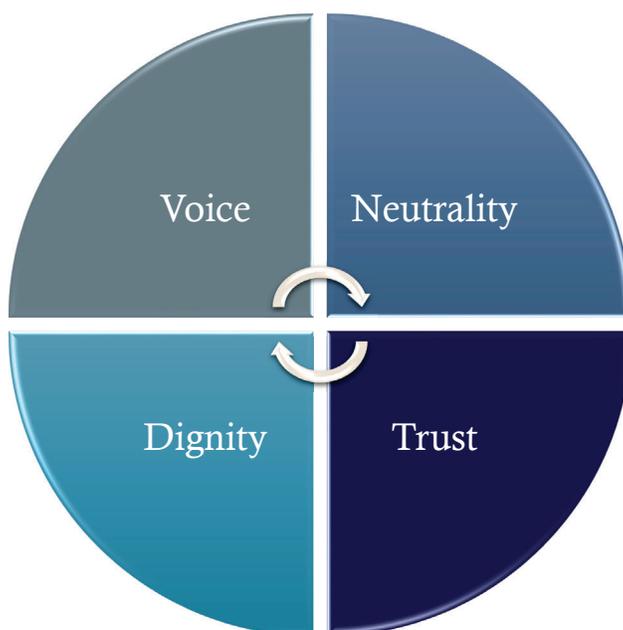
Conflict of interest

A situation where a person has multiple interests and one interest could compromise the person's judgment or decision-making

Bias

Prejudices in favor or against a person or group compared with another

PROCEDURAL FAIRNESS



THE INVESTIGATION



TITLE IX EVIDENCE REQUIREMENTS

1

Provide an equal opportunity to present fact witnesses and evidence

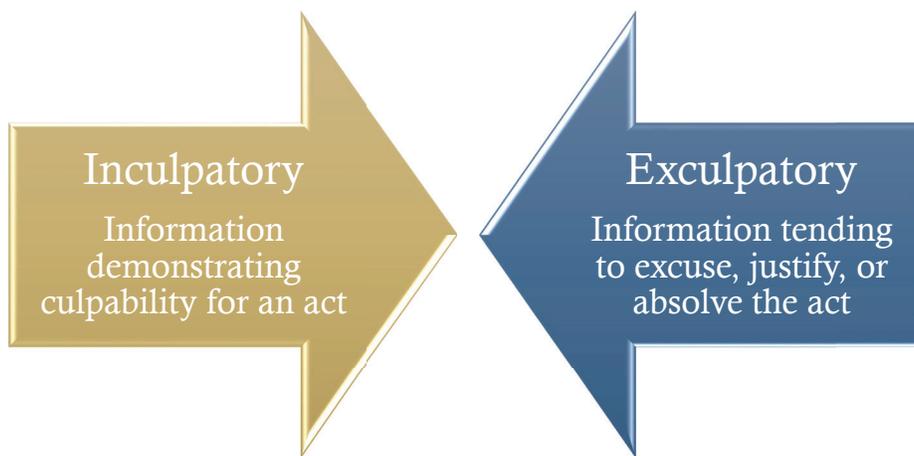
2

Provide an equal opportunity for each party to inspect and review the evidence and respond

3

Investigator must determine relevant and permissible evidence

EVIDENCE



RELEVANCY

Makes a fact more or less probable than it would be without the evidence

The fact is of consequence in determining the action

KEY RELEVANCY POINTS

1

The evidence does not need to be conclusive

2

Is sufficient if it constitutes a link in the chain

3

Enough if in connection with other evidence, helps “*a little*”

EVIDENCE THAT IS NOT RELEVANT



Privileged information



Physician/psychologist records



Complainant's sexual interest or prior sexual conduct

EVIDENCE REVIEW

- Each party and advisor will receive all evidence obtained that is directly related to the allegations, including evidence that may not be relied on to make a decision.
 - The parties have 10 calendar days to submit a written response to the investigator.
 - In writing the report, the investigator will consider the responses and the evidence obtained.
-

FINAL INVESTIGATIVE REPORT



Must accurately summarize the relevant evidence



Parties must be provided an opportunity to respond prior to the final determination

THE HEARING

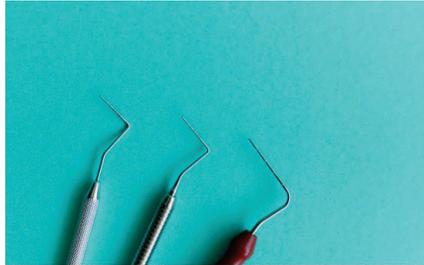


CROSS-EXAMINATION BY ADVISORS

Question by advisor

Relevancy determination by decision-maker

Answer by party or witness



IRRELEVANT QUESTIONS

- Past sexual history
- Privileged information
- Repetitive question
- Not probative of material fact

ABSENCE OR REFUSAL TO ANSWER CROSS

“The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.”

§ 106.45(b)(6)(i)

NOTIFICATION



Parties must be notified simultaneously



Becomes final on the date the parties are notified of an appeal decision

DETERMINATION REGARDING RESPONSIBILITY

Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale

Appeal procedures



APPEALS



AGENDA

- Appeal Basics
- Making a Determination
- Notification of Decision



APPEAL BASICS





THE APPELLATE OFFICER

- No other role
- Trained
- No conflict of interest or bias

TYPES OF APPEALS*

Dismissal

Determination Regarding
Responsibility

*An emergency removal allows for a “challenge” by the respondent; it is not an appeal.

APPEAL GROUNDS



Procedural irregularity that **affected the outcome**



New evidence that **could affect the outcome**



Conflict of interest or bias that **affected the outcome**



Additional grounds are permitted

KEY POINTS FROM THE REGULATIONS

Both parties have the right to appeal

Findings and sanctions are on hold

ADDITIONAL KEY POINTS



Not a substitute for the decision-maker's judgment



Not political decisions

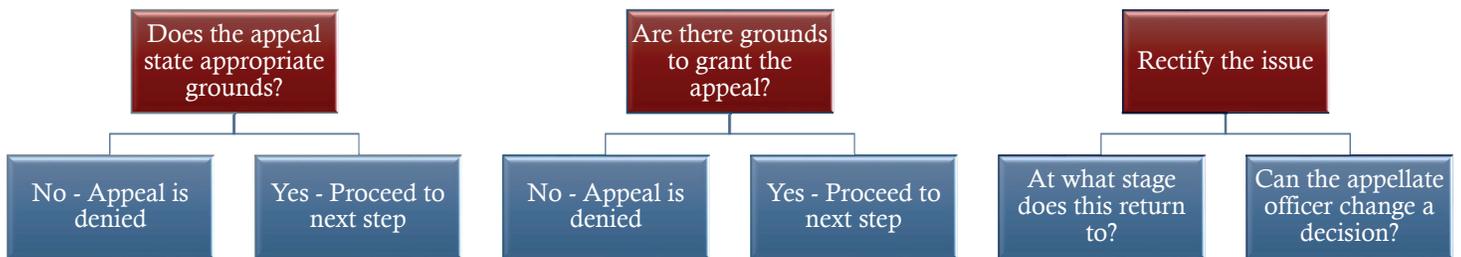


Not personal to you

MAKING A DETERMINATION



FLOW OF AN APPEAL DECISION



PROCEDURAL IRREGULARITY



PROCEDURAL IRREGULARITY

Was there a procedural error?

What was the alleged error?
What does the policy say?
Was it an error?
What should have happened?



Did it affect the outcome?

Did this error limit the full consideration of all relevant information?
Did it affect the outcome?

NEW EVIDENCE



NEW EVIDENCE

Is this new evidence?

Is it relevant evidence?
Was the party aware of its potential existence?
How was it not reasonably available?
When was it introduced?



Could it affect the outcome?

Does this lead to further questions?
Would it affect the outcome?

CONFLICT OF INTEREST OR BIAS



CONFLICT OF INTEREST OF BIAS

Was there a
conflict of
interest or bias?



Did it affect the
outcome?

What is the alleged conflict or bias?
What is the evidence that there was a conflict or a bias?
Was it previously raised?
Is it an actual conflict or bias?

Did this error limit the full consideration of all relevant information?
Did it affect the outcome?

ADDITIONAL
INSTITUTIONAL
GROUNDS



POSSIBLE ADDITIONAL GROUNDS

Sanction

Erroneous
Outcome

Other

RESPONSE TO THE APPEAL

Denied

- Decision is final

Granted

- Procedural irregularity – What is the process to remedy error?
- New Evidence – Does the case return to the decision-maker?
- Conflict of interest or bias – At what stage did this occur?

NOTIFICATION OF DECISION



THE APPEAL DECISION LETTER

State what
the appeal
asserted

Explain the
analysis and
rationale

Describe
the action
to be taken

WRITTEN DETERMINATION REQUIREMENTS



The result



Rationale



Simultaneous
notification





THANK YOU





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